IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1799 of 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PANKAJKUMAR CHHAGANLAL - Appellant(s)
Versus
NATIONAL TEXTILES CORPORATION (GUJARAT) LTD. - Defendant(s)

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Appearance :

MR SH SANJANWALA for Appellant(s) : 1,
NANAVATI & NANAVATI for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 10/08/2006

ORAL JUDGMENT

By way of the present appeal, the appellant herein original defendant (hereinafter referred to as “the defendant”) has challenged the judgment and decree passed by the learned City Civil Court at Ahmedabad dated 26-3-1984 passed in Civil Suit No.2157 of 1979 by which the defendant was directed to pay

Rs.21,487.81paisa with costs and interest at the rate of 6% per annum on Rs.17,901.09paisa from the date of the suit till realization. It is also required to be noted at this stage that the appellant herein original defendant also filed Civil Suit No.4256 of 1979 against the original plaintiff to recover Rs.69,102/- being the damages for non supply of the good, supply of defective goods having various defects and in the alternative for the delivery of the goods not supplied to the plaintiff. Thus, in sum and substance , suit No.4256 of 1979 can be said to be an account suit and/or account claim by the appellant. It is also required to be noted that the said suit came to be dismissed by common judgment and decree dated 26th April, 1984 passed in Civil Suit No.2157 of 1979 and Civil Suit No.4256 of 1979 by holding that the respondent herein was not entitled to the decree for damages. It is required to be noted that so far as the present appeal is concerned, it is challenging the judgment and decree passed by the learned trial Court passed in Civil Suit No.2157 of 1979 and the appellant has not challenged the judgment and decree passed by the learned trial Court in Civil Suit No.4256 of 1979 by which the findings are against the appellant. However, the learned advocate appearing on behalf of the appellant has submitted that though the findings of the learned trial Court in Civil Suit No.4256 of 1979 are not challenged, though it will not be possible for the appellant to challenge the judgment and decree and the findings in Civil Suit No.2157 of 1979 on merits, however, so far as the issue of

limitation is concerned, the same can be assailed by the appellant in the present appeal, while challenging the judgment and decree passed in Civil Suit No.2157 of 1979 and therefore, the only issue which is required to be considered by this Court in the present appeal is with regard to whether Civil Suit No.2157 of 1979 was within the period of limitation and/or the plaintiff is entitled to a decree as prayed for.

2. The facts for the purpose of determination of the present appeal are that the defendant used to purchase goods from the original plaintiff. It was the contention on behalf of the original plaintiff that they were maintaining open current account and that the last payment which was made by original defendant was on 20-7-1976. It is also required to be noted that in the plaint, so far as the limitation aspect is concerned, there are no specific pleadings with regard to the extension of period of limitation by acknowledgment of date i.e. last payment made on 20-7-1976 and what was pleaded in the suit was that the suit is within the period of limitation, except that, there are no other pleadings. The learned trial Court decreed the suit directing the appellant to pay Rs.21,487.81paisa with interest at the rate of 6% per annum of Rs.17,901.09paisa. Being aggrieved by and dissatisfied with the same, the appellant has preferred the present appeal.

3. Shri Shamik Sanjanwala, learned advocate appearing on behalf of the appellant has vehemently submitted that the learned trial Court has materially erred in passing the decree against the appellant as, as such the suit was barred by limitation. It is submitted that the last goods which was alleged to have been purchased by the appellant was on 24-2-1976 and considering the same, the limitation would start from 24-2-1976 and the plaintiff was required to file the suit on or before 24-2-1979 against which the plaintiff filed the suit on 3-7-1979. It is submitted by him that if it is the contention on behalf of the plaintiff that the period of limitation was extended considering the last payment on 20-7-1976 i.e. considering the acknowledgment and Article 14 of the Limitation Act, in that case, as contemplated under Order 7 Rule 6 of the Civil Procedure Code (CPC), the plaintiff was required to plead in the plaint itself that though the period of limitation has expired but the period of limitation has been extended by acknowledgment i.e. considering the payment on 20-7-1976 and therefore, the suit is within the period of limitation. It is submitted that in the plaint there was no such averments and/or pleadings and therefore, the learned trial Court has materially erred in decreeing the suit. It is submitted that even considering the proviso to Rule 7 Order 6 of the CPC, the same was permitted subsequently also but that could have been done with the leave of the Court and in the present case, there is no such leave obtained and therefore, the suit was clearly barred by

limitation and the judgment and decree passed by the learned trial Court is required to be quashed and set aside and the appeal is required to be allowed.

4. He has relied upon the judgment of the Hon'ble Supreme Court in the case of Sant Lal Mahton V. Kamla Prasad and others reported in AIR 1951 SC 477 in support of his submission.

5. On the other hand, Shri Saurabh Mehta, learned advocate appearing on behalf of the respondent herein original plaintiff while relying upon the Article 1 of the Limitation Act and the averment in the plaint, has submitted that the account was an open current account and therefore, the limitation would start from the close of year in which the last item admitted or proved is entered in the account and such year to be computed as in the account. Therefore, it is submitted that considering Article 1 of the schedule to Limitation Act, 1963, the suit was within the period of limitation and therefore, the learned trial Court has not committed any error in decreeing the suit. He has relied upon the judgment of the Delhi High Court in the case of Taneja Skins Co. Pvt. Ltd. V. Bharath Skins Corporation reported in AIR 2002 Delhi 179, more particularly para 17 of the said judgment. According to him, Delhi High Court has held that if it is a mutual running account that is being maintained in that event limitation would not end with the supply but would keep on

being extended when the last payment was made. Relying upon the aforesaid judgment, it is requested to dismiss the present appeal.

6. Heard the learned advocates appearing on behalf of the parties.

7. Considering the fact that the reasoning and finding of the learned trial Court in Civil Suit No.4256 of 1979 are not challenged by the appellant, the only question which is required to be considered by this Court is whether the suit claim of the plaintiff in Civil Suit No.2157 of 1979 against the appellant was barred by the limitation or not. It is an admitted position that the last goods sold to the defendant for which the entry was made on 24-2-1976. It is also an admitted position that some payment was made on 20-7-1976. It is averred in the plaint that the account which was being maintained was an open current account, however, it is required to be noted that it is specifically denied by the defendant in the written statement, the account which was being maintained was an open current account. Shri Sanjanwala, learned advocate appearing on behalf of the appellant has submitted that for the purpose of considering Article 1, what was required was that the account must be a mutual open and current account. It is submitted by him that there is nothing on record that the account which was maintained was a mutual open current account. It is submitted that what has

come on record is the account maintained by the original plaintiff only and nothing is on record that the account was a mutual open and current account. Therefore, according to him, Article 1 would not be applicable. It is required to be noted at this stage that the suit was filed on 3-7-1979. Therefore, considering the last item and the last date on which the goods were sold to the defendant dated 24-2-1976 then in that case, three years was expired on 24-2-1979 and the plaintiff was required to file the suit on or before 24-2-1979. The suit is admittedly filed on 3-7-1979. For the purpose of bringing the suit within the aforesaid period of limitation, it is the contention on behalf of the plaintiff that, as some payment was made on 20-7-1976 and the said payment was not with regard to a particular bill, the limitation period starts from 20-7-1976 and the said payment was made with regard to a particular bill, the limitation period starts from 20-7-1976 and therefore when the suit was filed/instituted on 3-7-1979, the same was within the period of limitation. Thus, in sum and substance, the plaintiff wants to get the limitation period extended while considering the acknowledgment on the basis of the last payment made on 20-7-1976 and for that purpose, Section 19 of the Limitation Act would be applicable. As stated above, admittedly in the suit, there are no pleadings with regard to acknowledgment of the debt and/or extension of limitation. Rule 7 Order 6 of the CPC reads as under:

"**Grounds of exemption from limitation law-** *whether the*

suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed."

[*Provided that Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint.*]

Now considering Order 7 Rule 6 of the CPC, when the suit is instituted after the expiration of the period prescribed by the law of limitation, the plaint shall show the ground upon which exemption from such law is claimed. Proviso to Order 7 Rule 6 provides that the Court may permit the plaintiff to claim exemption from the law of limitation on any ground not set out in the plaint, if such ground is not inconsistent with the grounds set out in the plaint. Therefore, even if it is not pleaded in the plaint then the same can be permitted by the Court. However, for the purpose of the same, Court's permission is required. As stated above, in the plaint, there are no pleadings with regard to extension of the period of limitation and/or the acknowledgment of debt etc. Not only that but there is no such permission obtained from the learned trial Court. At this stage, the judgment of the Hon'ble Supreme Court in the case of Sant Lal Mahton (supra) is required to be considered in which after considering various provisions of the Limitation Act and the CPC,

more particularly, Order 7 Rule 6 of the CPC read with Section 3 of the Limitation Act and Section 20 of the Limitation Act, the Hon'ble Supreme Court has held that Whether a suit is time barred or not has got to be determined exclusively with reference to the date on which the plaint is filed and the allegations made therein. The legislature has expressly declared in S. 3, Limitation Act, that whether the defence of limitation be pleaded or not, the Court is bound to dismiss a suit which is brought after the period provided therefor in the first schedule to the Limitation Act. It is further observed by the Hon'ble Supreme Court that if the plaintiff's right of action is apparently barred under the Statute of Limitation, 0. 7, R. 6, Civil P. C. makes it his duty to state specifically in the plaint the grounds of exemption allowed by the Limitation Act, upon which he relies to exclude its operation ; and if the plaintiff has got to allege in his plaint the facts which entitle him to exemption, obviously these facts must be in existence at or before the time when the plaint is filed. It is further observed by the Hon'ble Supreme Court that to claim exemption under S. 20, Limitation Act the plaintiff must be in a position to allege and prove not only that there was payment of interest on a debt or part payment of the principal, but that such payment has been acknowledged in writing in the manner contemplated by that section. Thus, considering the provisions of Order 7 Rule 6 of the CPC read with Section 19 of the Limitation Act and the observations of the Hon'ble Supreme Court and in absence

of any pleadings in the plaint with regard to exemption and there being no specific findings given by the learned trial Court and or any evidence on record to substantiate that the account which was maintained was mutual open current account and considering the fact that the last transaction was on 20-2--1976 and the suit was filed on 3-7-1979, the only conclusion which can be is that the suit was clearly barred by limitation and in absence of any pleadings in the plaint with regard to exemption and/or extension of time of limitation by acknowledgment on the basis of the last payment made on 20-7-1976, the suit is required to be dismissed on the ground that the claim was barred by limitation.

8. Under the circumstances and without even disturbing the other findings of the learned trial Court on merits, only on the point of limitation, the appeal is required to be allowed.

9. For the reasons as stated above, the appeal succeeds . The judgment and decree passed by the learned City Civil Court at Ahmedabad dated 26-3-1984 passed in Civil Suit No.2157 of 1979 is hereby quashed and set aside in the facts and circumstances of the case. No costs.

(M.R.SHAH,J.)

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